

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5146 of 1984

Date of decision: 17-1-1997

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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M M SHAH

Versus

STATE OF GUJARAT

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Appearance:

MR DEEPAK M SHAH for Petitioners  
None present for Respondent No. 1, 2

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 17-01/97

ORAL JUDGEMENT

Mr. Mukesh Patel, A.G.P., is present in court,

but he states that he has not got the papers of the case as well as instructions to appear in this case.

Heard the learned counsel for the petitioner and perused the special civil application.

2. The petitioners - in all ten in number - filed this special civil application and prayer has been made that the action of the respondents in preparing combined seniority list of both light motor vehicle drivers as well as heavy motor vehicle drivers be set aside by quashing seniority list at annexure-F and the order annexure-G under which six heavy motor vehicle drivers have been given selection grade. The petitioners' grievance is that the post of driver of light motor vehicles and that of drivers of heavy vehicles are two different and distinct posts having different pay-scales. The respondents were maintaining two separate seniority list for these two posts for all the years, but the respondents recently have prepared a combined seniority list of heavy vehicle drivers and light vehicle drivers. It has further been contended by the counsel for the petitioners that the petitioners were given the selection grade on the basis of their seniority in the category of driver of light vehicles, and now those orders are sought to be withdrawn and recovery is ordered to be made. This is the consequence of the combined seniority list prepared.

3. I have given my thoughtful consideration to the submissions made by the learned counsel for the petitioners.

4. Reference may have to be made to the decision of the Gujarat Civil Services Tribunal, Gandhinagar, in appeal No.220 of 1981 filed by one C.R.Thakore, in which petitioner No.1 was one of the party- respondents. The said appeal was decided on 21-7-1983. In the appeal Shri C.R. Thakore has challenged the order dated 25th November, 1974 of the Department granting selection grade with effect from 1-3-1972 to Shri A.S.Dave, temporary jeep driver and Shri M. M. Shah, temporary jeep driver, and prayed for giving him selection from the said date. During the course of arguments, Shri C.R. Thakore , appellant before the Tribunal, had given up his claim against Shri A.S. Dave, who was admittedly senior to him. However, he pressed his claim against Shri M.M. Shah, petitioner No.1 herein. The appeal was allowed and the order dated 25th November, 1974 to the extent it relates to giving selection grade to petitioner No.1 herein was set aside. Further direction was given to

grant selection grade to the appellant Shri C. R. Thakore from the date on which respondent No.3 was given selection grade i.e. 1-3-1972. Review application has been filed in the matter by the Department and the same has come to be decided under order dated 30th April, 1984. The order dated 25th November, 1974 has been quashed and set aside. However, so far as petitioner No.1 is concerned, the order of the Tribunal setting aside the order giving him selection grade has been maintained. Consequent upon the said judgment of the Tribunal, order annexure-G has been made and selection grade has been given to the persons named therein. Selection grade has been given on the basis of seniority. None of the persons who has been given selection grade under order annexure-G is impleaded as party to this special civil application. It appears that Shri C.R. Thakore was also not given selection grade and that is the reason why he has joined other petitioners in this petition. Prayer has also been made for quashing the order of the Tribunal at annexure-A and annexure-B, but this prayer cannot be allowed for obvious reason that it is a distinct and separate cause of action which has been joined in this case. None of the other petitioners were party to the appeal and the review application. Naturally, dispute of Shri C.R.Thakore with the department cannot be a point in the present special civil application. Moreover, the counsel for the petitioner has failed to point out any illegality in the order of the Tribunal impugned in this special civil application.

5. There is yet another reason for which this writ petition cannot be allowed. The petitioners have challenged the framing of combined seniority list of heavy vehicle drivers and light vehicle drivers. None of the persons who has been shown senior to the petitioners in the seniority list has been made party to this writ petition. In absence of those persons in this special civil application, no relief whatsoever can be granted to the petitioners. Those persons were necessary party and in absence of them if any decision is given it will be against the principles of natural justice. This Court will not perpetuate an illegality. So the order preparing combined seniority list as well as the order withdrawing selection grade given to some of the persons cannot be challenged in this special civil application, as the persons who have been given selection grade and the persons who have been shown senior to the petitioners in the seniority list have also not been joined as parties.

6. In the case of Ishwarsingh vs. Kuldipsingh,

reported in (1995) Supple. 1 SCC 179, the Hon'ble Supreme Court held that writ petition challenging selection and appointment without impleading and serving selected candidates is not maintainable. In this case also, the petitioners have challenged annexure-G under which selection grade has been given to many persons, but none of them has been joined as party to the petition. In absence of those persons that order cannot be set aside. So, taking into consideration the totality of facts and circumstances of the case, no interference is called for by this court in this matter.

7. In the result the writ petition is dismissed. Rule discharged. Interim relief granted earlier stands vacated.

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